

**TOLLING AGREEMENT BETWEEN
CITY OF EVERETT AND ALDERWOOD WATER AND WASTEWATER DISTRICT**

RECITALS

WHEREAS, the City of Everett, a municipal corporation of the State of Washington ("the City"), and the Alderwood Water and Wastewater District, a municipal corporation of the State of Washington ("the District") entered into a Water Supply Contract on or about January 28, 2005 ("the Contract"). Under the Contract, the City has agreed to sell water to the District, and the District has agreed to purchase the water.

WHEREAS, the District provides the water purchased under the Contract to the members of the Clearview Water Supply Agency ("Clearview"), which consists of the District, Silver Lake Water and Sewer District, and Cross Valley Water District.

WHEREAS, for the purpose of billing the District under the Contract, the City measures the water sold under the Contract through the use of a master flow meter. The master flow meter is owned and maintained by the City.

WHEREAS, the District has become aware of a significant amount of unaccounted-for water in the Clearview system. Following a number of tests of other parts of the Clearview system, concern has focused on the accuracy of the master meter, which the City had wanted to replace in any case; however initial attempts to install a new meter have encountered technical problems and significant delays

WHEREAS, the parties have been in discussions about master meter replacement and possible overbilling issues and desire to continue these discussions and attempt to resolve the issues, without concern about any limitations periods that may affect their legal rights.

NOW, THEREFORE, the City and the District (each, a "Party" and, collectively, the "Parties") enter into this agreement ("Tolling Agreement"), and, intending to be bound thereby, make the following promises, which are acknowledged by the Parties as mutual and adequate consideration:

AGREEMENT

1. Incorporation of Recitals. The Recitals are incorporated by reference into this Tolling Agreement.
2. Effective and Expiration Dates. The effective date ("Effective Date") of this Tolling Agreement shall be 12:00 a.m. (Pacific Time) on January 1, 2014. This Tolling Agreement shall expire at 11:59 p.m. (Pacific Time) on June 30, 2015 ("Expiration Date"); provided, however, that either party may terminate the Tolling Agreement prior to the Expiration Date upon sixty (60) days' advance written notice. The 60-day notice period shall begin on the date the Party sent the written notice as provided by Paragraph 7, below. In the case of a termination by written notice, the "Expiration Date" shall be the expiration date of the 60-day

notice period.

3. Tolling of Statutes of Limitation. To the extent permitted by Washington law, the Parties hereby agree that in any litigation between or among them relating to or arising out of the overbilling issue described in the Recitals above, no Party, in asserting any affirmative defense based on any limitations period, including, without limitation, statutes of repose and limitation, laches, or bar to action for failure to timely make demand or to timely file (collectively, "Statutes of Limitation"), shall in its computation of time for such defense include any time which elapses between and including the Effective Date and the Expiration Date (the "Tolling Period"). Notwithstanding the foregoing, each Party hereby expressly reserves its right to assert a defense (a) based upon the expiration of any of the Statutes of Limitation prior to the Effective Date or (b) which is otherwise available to such Party.

4. Effect on Prejudgment Interest. If any Party obtains a judgment against the other with respect to the Contract, the prevailing Party shall exclude the Tolling Period in the computation of any prejudgment interest. The provisions of this paragraph 4 shall survive the Expiration Date.

5. No Admission of Fault. No Party admits any breach, fault, or liability of any kind, and no Party waives or concedes any claim or defense, relating to or arising out of the Contract or otherwise related to the overbilling issue.

6. Fees and Costs. The rights of any prevailing Party to recover attorneys' fees and costs incurred in enforcing the Contract pursuant to the terms thereof, if any, is unmodified by this Tolling Agreement.

7. Notice. Formal notice under and official communications between the Parties regarding this Tolling Agreement shall be sent by first class mail as follows:

To the City:
Mayor
City of Everett
2930 Wetmore Avenue
Everett WA 98201

To the District:
General Manager
Alderwood Water and Wastewater District
3626 156th St. SW
Lynnwood WA 98037

8. Justifiable Reliance. The City acknowledges and agrees that the District is justifiably and reasonably relying upon the terms and conditions set forth in this Tolling Agreement, that the Statutes of Limitation are subject to being tolled, and that this Tolling Agreement is enforceable in accordance with its terms.

9. Authority. Each Party represents that this Tolling Agreement has been duly and validly authorized, executed and delivered by such Party and no other action is requisite to the valid and binding execution, delivery and performance of this Tolling Agreement by such Party.

10. Counterparts. This Tolling Agreement may be executed in counterparts, and delivered via facsimile or other means of electronic image transmission, all of which

counterparts, together, shall constitute one and the same instrument, be deemed an original for all purposes and be binding on the Parties as if all signatures were affixed to a single document.

IN WITNESS WHEREOF, the Parties have caused this Tolling Agreement to be executed by their proper Officers on the dates listed below.


CITY OF EVERETT

ALDERWOOD WATER AND
WASTEWATER DISTRICT

Dated: 2-12-2014

Dated: JAN. 13, 2014


Ray Stephanson, Mayor



Donna Cross, Board President

ATTEST

Sharon Fuller, City Clerk

ATTEST


APPROVED AS TO FORM


Jim Iles, City Attorney

Agreement

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Tolling Agreement with
Alderwood Water and
Wastewater District
For the Clearview Water
Supply Meter Replacement

____ Briefing
____ Proposed Action
____ Consent
____ Action
____ First Reading
____ Second Reading
____ Third Reading
____ Public Hearing
____ Budget Advisory

COUNCIL BILL #

Originating Department

Contact Person

Phone Number

FOR AGENDA OF

Public Works

Mark Sadler

425-257-8967

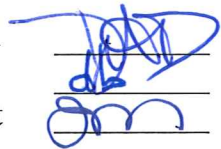
Feb. 5, 2014

Initialed by:

Department Head

CAA

Council President



Location

Preceding Action

Attachments

Department(s) Approval

2005 Clearview
Operations Agreement
with AWWD

Agreement

Legal

Amount Budgeted	\$0	
Expenditure Required	\$0	
Budget Remaining		
Additional Required	\$0	

DETAILED SUMMARY STATEMENT:

The City sells water to the Alderwood Water and Wastewater District (AWWD), through city owned and maintained master meter which records the amount of water being sold. AWWD, has performed flow measurement tests downstream of the master meter and believes the meter is inaccurate. AWWD, with the City, have attempted to install a new meter and quantify the degree of inaccuracies in the old meter, but encountered technical problems and delays. Both parties wish to continue pursuing a master meter replacement to clarify billing issues without concern about time limitations that may affect their legal rights. This Tolling Agreement provides additional time to install a new master meter and address potential meter accuracies.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the Tolling Agreement with Alderwood Water and Wastewater District for the Clearview Water Supply meter replacement.

*Council Approved
on 2/5/14
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